

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

### Respondent,

No. CR S-97-0591 JAM GGH P

VS.

LUCIANO RAMIREZ-SALAZAR,

Movant.

## FINDINGS AND RECOMMENDATIONS

1 sentenced again in 2010 to 220 months (to be served concurrently with 120 months), pursuant to  
2 a stipulation of the parties in light of Amendments 706 and 713 and factors presented in 18  
3 U.S.C. § 3553. Order at dkt # 141; Dkt # 154. By this motion, movant claims he was subjected  
4 to a wrongful arrest, false imprisonment and prosecution in 1997; evidence was planted against  
5 him to obtain his 1999 conviction; movant has been the victim of unspecified fraud by his  
6 appellate counsel and “corruption” of Ninth Circuit judges (who denied his appeal) in 2000. Dkt  
7 # 154 at 1-4.

8 Respondent moves to dismiss the motion, arguing that 1) movant fails to specify  
9 any ground for relief or any facts in support of his grounds for relief (Fed. R. Civ. P. 12(b)(6)); 2)  
10 the instant motion is a second or successive motion, which must first be certified by the appellate  
11 court before movant can proceed in this court (28 U.S.C. § 2255(h)); 3) the motion is barred by  
12 the one-year statute of limitations (§ 2255(f)). Motion to Dismiss at dkt # 166 at 2-4.

13 Because this court does not have jurisdiction of a second or successive § 2255  
14 motion unless the “stringent standard” of § 2255(h) is met, the undersigned must first consider  
15 that ground for dismissal. United States v. Washington, 653 F.3d 1057, 1065 (9th Cir. 2011)  
16 (finding that petitioner’s purported Rule 60(b) motion was “a disguised § 2255 motion” which  
17 district court had no jurisdiction to consider absent authorizing certificate from appellate court);  
18 see also Alaimalo v. United States, 645 F.3d 1042, 1054 (9th Cir. 2011). To file a second or  
19 successive § 2255 motion in this district court, petitioner/movant first needs the permission of  
20 the Ninth Circuit Court of Appeals. United States v. Buenrosto, 638 F.3d 720, 723 (9th Cir.  
21 2011).

22 Section 2255(h) provides:

23 A second or successive motion must be certified as provided by  
24 section 2244 by a panel of the appropriate court of appeals to  
contain—

25 (1) newly discovered evidence that, if proven and  
26 viewed in light of the evidence as a whole, would be  
sufficient to establish clear and convincing

1 evidence that no reasonable factfinder would have  
2 found the movant guilty of the offense; or

3 (2) a new rule of constitutional law, made  
4 retroactive to cases on collateral review by the  
5 Supreme Court, that was previously unavailable.

6 Section 2244(b)(3)(A) states: "Before a second or successive application permitted by this  
7 section is filed in the district court, the applicant shall move in the appropriate court of appeals  
for an order authorizing the district court to consider the application."

8 On February 4, 2002, Petitioner filed for a writ of habeas corpus  
9 pursuant to 28 U.S.C. § 2255, which raised the following four  
10 grounds for relief: 1) his right to a speedy trial act was violated; 2) the amount of drugs attributed to him was erroneous; 3) he had  
11 ineffective assistance of counsel; and 4) he was denied a fair trial  
12 under the Sixth Amendment. [...] His Petition was denied on June  
13 18, 2002. [...] The district court and Ninth Circuit subsequently  
14 denied his requests for a certificate of appealability.

15 On January 29, 2004, Petitioner filed a second request for a writ of  
16 habeas corpus pursuant to 28 U.S.C. § 2255, which raised the  
17 following four grounds for relief: 1) he had ineffective assistance  
18 of counsel; 2) his rights under the Sixth Amendment's  
19 Confrontation Clause were violated; 3) he was entitled to an  
20 evidentiary hearing; and 4) he was actually innocent of the drug  
21 charge. [...] On April 7, 2005, the Ninth Circuit denied his  
22 application for authorization to file a second of successive petition.  
23 [...] Petitioner's subsequent request to file a successive petition was  
24 also denied on January 25, 2006. [...]

25 Salazar v. Outlaw, 2012 WL 1345198 \* 2.

26 In addition, the court takes judicial notice<sup>1</sup> and confirms that, by order filed on  
June 19, 2002, movant's motion pursuant to 28 U.S.C. §2255 was denied; by order filed on  
April 28, 2004, movant's § 2255 motion filed January 29, 2004, was dismissed for movant's  
failure to comply with the proper procedure for second or successive petitions. By order filed in

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24 <sup>1</sup> A court may take judicial notice of court records. See Barron v. Reich, 13 F.3d 1370, 1377  
25 (9<sup>th</sup> Cir. 1994); MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v.  
Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 this court on April 8, 2005, the Ninth Circuit denied movant's application to proceed on the  
2 successive petition.

3 Because this motion appears to be a patently unauthorized second or successive §  
4 2255 motion on the face of it, the court will recommend its dismissal as such and cannot reach  
5 the other grounds raised by respondent.

6 Accordingly, IT IS RECOMMENDED that:

7 1. Respondent's motion to dismiss, filed on February 27, 2012 (docket # 166), be  
8 granted on the ground that the § 2255 motion is an unauthorized second or successive § 2255  
9 motion.

10 2. A certificate of appealability be denied in this action.<sup>2</sup>

11 These findings and recommendations are submitted to the United States District  
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
13 days after being served with these findings and recommendations, any party may file written  
14 objections with the court and serve a copy on all parties. Such a document should be captioned  
15 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
16 shall be served and filed within fourteen days after service of the objections. The parties are  
17 advised that failure to file objections within the specified time may waive the right to appeal the  
18 District Courts order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: June 5, 2012

20 /s/ Gregory G. Hollows  
21 UNITED STATES MAGISTRATE JUDGE  
22

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24 <sup>2</sup> A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has  
25 made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For the  
reasons set forth in the findings and recommendations, movant has not made a substantial showing  
of the denial of a constitutional right.